

International Law-Making



Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in The Arctic

Background

Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (the “Agreement”) was made out of the conscience that there is a threat from marine oil pollution to the vulnerable Arctic marine environment and to the livelihoods of local and indigenous communities, as stated by the Preamble of the Agreement. It is also stated that in the event of an oil pollution incident, it is essential to have a prompt and effective action and cooperation among the state parties to minimize the damage. There was also the necessity to exchange important information, data, and experience in the field of marine oil pollution preparedness and response regarding the Arctic environment, and on the effects of pollution on the environment, and of regularly conducting joint training and exercises, as well as joint research and development.

Concept

Based on Article 1 of the Agreement, the objective of this Agreement is to strengthen cooperation, coordination and mutual assistance among the Parties on oil pollution preparedness and response in the Arctic in order to protect the marine environment from pollution by oil. According the Preamble, the Agreement works under the “polluter pays” principle as recognized generally and universally.

Entry into Force

According Article 22(2), the Agreement will enter into force 30 days after the receipt of the last notification from the Parties (the 8 signatories to the Agreement according to the Preamble) that they have completed the internal procedure necessary to enact the Agreement. As

per June 2014, the Treaty has been ratified by 4 states; Kingdom of Norway, Republic of Finland, Russian Federation, and Canada.

Main Features

The Agreement consists of a Preamble and 23 Articles.

Based on Article 4 of the Agreement, each Party shall maintain a national system for responding to oil pollution incidents that shall take into account activities and locales most likely to give rise to or suffer an oil pollution incident and anticipated risks to areas of special ecological significance. It also includes contingency plan or plans, such as the organizational relationship of the various public or private bodies involved.

Based on Article 5 of the Agreement, state parties must establish a national authority or authorities responsible for oil pollution preparedness and response. It also requires the establishment of a 24-hours operational contact point(s) to receipt and transmit oil pollution reports. Lastly, the Agreement requires state parties to establish an authority or authorities entitled to act on its behalf to request assistances. According to Article 8, assistance can be requested to any other state party or parties.

Aside from direct preparedness and response, the Agreement also encourages multiple cooperation schemes. Article 11 of the Agreement states that after a joint response (as stated in Article 8), the Parties shall conduct a joint review to document findings and make relevant conclusions that will be made publicly available. Article 12 of the Agreement states that the parties shall promote cooperation and exchange of Information in order to improve the effectiveness of oil pollution preparedness and response operations. Article 13 encourage cooperation and coordination by carrying out joint exercises and training, including alerting or call-out exercises, table-top exercises, equipment deployment exercises, and other relevant activities.

(RW)

Patent Cooperation Treaty

Background

The Patent Cooperation Treaty (“PCT”) is an international parent law treaty, concluded on 19 June 1970 in Washington D.C., United States of America.

The PCT provides a unified procedure regarding patent applications to the contracting states. The PCT patent application will be called an “international application”, or “PCT application”.

The Washington Diplomatic Conference on the Patent Cooperation Treaty was held in Washington from 25 May to 19 June 1970. The Treaty was subsequently amended in 1979, and modified in 1984 and 2001.

Concept

Based on the Preamble, the PCT was made out of the conviction that cooperation among nations will greatly facilitate the attainment of the desire:

- To make a contribution to the progress of science and technology
- To perfect the legal protection of inventions
- To simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries
- To facilitate and accelerate access by the public to the technical information contained in documents describing new inventions
- To foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology.

Entry into Force

The Treaty entered into force on 24 January 1978, initially with 18

contracting states. The first international applications were filed on 1 June 1978.

According to Article 63 paragraph 1(a) of the PCT:

- a. ... The PCT shall enter into force three months after eight States have deposited their instruments of ratification or accession, provided that at least four of those States each fulfill any of the following conditions:
 - i. The number of application filed in the State has exceeded 40.000 according to the most recent annual statistics published by the International Bureau
 - ii. The nationals or residents of the State have filed at least 1.000 applications in one foreign country according to the most recent annual statistics published by the International Bureau
 - iii. The national Office of the State has received at least 10.000 application from nationals or residents of foreign countries according to the most recent annual statistics published by the International Bureau

Main Features

PCT consists of a Preamble and 69 articles.

A PCT application (also called “international patent application”) has two phases. The first phase is the international phase in which patent protection is pending under a single patent application filed with the patent office of a contracting state of the PCT. According to Article 3 paragraph 2 of PCT, and international application shall contain a request, a description, on or more claims, drawings (where required), and an abstract. Based on Article 4 paragraph 1, the request shall contain a petition to the effect that the international application be processed according to the PCT. Based on Article 5, the description shall disclose the invention in a clear manner and complete for the invention to be carried out by a person skilled in the art. Article 6 states that the claim(s) shall define the matter for which protection is sought. Article 7 states that drawings shall be required when they are necessary for the understanding of the invention. Each international application will be the subject of international search to discover relevant prior arts. The international search will be carried out by an International Searching Authority.

The second phase is the national and regional phase which follows the international phase in which rights are continued by filing necessary documents with the patent offices of separate contracting states of the PCT. A PCT application, as such, is not an actual request that a patent be granted, and it is not converted into one unless and until it enters the “national phase”.

(RW)

Convention on Cluster Munitions 2008

Background

Civilians have paid dearly for the unreliability and inaccuracy of cluster munitions since its first used in the 1940s. Delivered in massive number over vast areas, these weapons have killed and injured thousands of civilians in war-countries, particularly in Asia, Europe, and the Middle East. Throughout this condition, the International Committee of the Red Cross (ICRC) has expressed its deep concern for many years, and in 2000, it called on states to stop using them and urgently negotiate a legally binding instrument to address the wide-spread human suffering caused by these weapons.

Due to the suffering endured by civilians by decades of time cluster munitions were used and the lack response to this, Norway launched the “Oslo Process” in February 2007. This process aimed at creating an international treaty to prohibit cluster munitions that cause “unacceptable suffering” to civilians and was opened to all states. After global follow up conferences in Lima, Vienna and Wellington, and regional meetings in Africa, Asia, Europe, and Latin America, the convention on Cluster Munitions was adopted on 30 May 2008 by a Diplomatic Conference in Dublin in which more than 100 states participated.

Object and Purpose

If it is fully implemented, the convention can directly benefit affected communities by increasing efforts to clear areas contaminated by cluster munitions. This will save lives and reclaim land for agriculture as well as other productive activities. The convention can also benefit victims by increasing commitment to various types of support including medical care and rehabilitation activities. But most importantly, the convention will prevent an immense amount of human suffering by ensuring that hundreds millions of cluster munitions are destroyed.

Concept

The convention reinforces fundamental customary IHL rules that applicable to all states. These rules require parties to a conflict to distinguish at all times between civilians and combatants, to direct opera-

tions only against military objectives and to take constant care to spare civilians and civilians objects. On the basis of cluster munitions will explode and expand bullets, chemical weapons, biological weapons, anti-personnel mines, weapons using undetectable fragments and blinding lasers – be regarded as weapons prohibited under IHL.

Main Features

The convention consists of 23 Articles.

- A. Definition.** Cluster munition is a weapon that disperses or releases explosive submunitions : small, unguided explosives or bomblets (with weight of less than 20 kilograms) which designed to explode prior to, on or after impact. Under the term of convention, weapons with fewer than 10 explosive submunitions are not considered as cluster munitions as long as each submunition weighs more than five kilograms, can detect specific target object and equipped with electronic self-destruct and self deactivating features. The convention neither prohibits nor restricts the use of these weapon; as their use id regulated by IHL general provisions.
- B. Basic Obligations.** State parties must never under any circumstances use. Develop, produce, acquire, stockpile, retain or transfer cluster munitions. They generally prohibited from assisting, encouraging or inducing anyone to undertake any activity prohibited by its provisions. As addition, states posessing, or affected by cluster munitions are also required to take action in specific areas in form of destructing stockpiles, clearing cluster munition remnants, and assisting the victims. Regarding the time for stockpiles destruction, each state is required within eight years of becoming the party of the convention to destroy the stockpiles of cluster munitions under its jurisdiction and control. This deadline can be extended for an additional four years and further extension of four years in exceptional circumstances.
- C. Clearance Framework.** Each state must clear its territory of unexploded submunitions within 10 years of its becoming a party to the convention. If a state unable to do so, it may request for additional periods of five years.

D. Provisions on Assistance of Victims. Each state that has cluster munitions victims on its territory or under its control must provide medical care and physical rehabilitation, psychological support and social economic inclusion. States must also assess domestic needs in these areas and develop plans and mobilize resources to meet them; as this is the first time that such a detailed provision on assistance of victims included in an IHL treaty.

It is worth noting that the convention defines a wide scope of what classified as “cluster munition victims” as not only those who are killed or injured by cluster munition, but also covers families and communities that have suffered socio-economic and other consequences.

E. Measures on Promoting Implementation and Ensuring Compliance. The convention includes a variety of mechanisms for promoting its implementation and for ensuring that its provisions are respected. Some of these may necessitate the adoption of domestic legislation and administrative regulations. In the interest of transparency, states are required to submit annual reports to the UN Secretary General on a range of matters such as types and number of cluster munitions destroyed, extent and locations contaminated, status and clearance programmes, measures to be taken to provide risk education and warning to civilians, the status of programmes for providing assistance to victims and the measures taken domestically to prevent and suppress violations of the Convention. Reporting on these matters also provides an overview on the status of implementation.

Finally, each party has an obligation to take all appropriate legal, administrative and other measures to implement the convention. This includes the imposition of penal sanctions to prevent and suppress violations by persons, or on territory under state jurisdiction or control.

(MM)

Convention on the Conservation of Migratory Species of Wild Animals

Background

People consumption of earth's natural resources at any rates and ways has placed unsustainable pressure on many of the world's ecosystem and species. The unsustainable pressure comes in various threats such as manmade climate change, the spread of disease around the planet as a result of international trade and travel, destruction of natural habitats and urban development, light pollution, noise pollution, etc. Throughout this facts, the states seen the urge need of making an international instrument as an action to regulate the conservation process of the migratory species.

The Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention or CMS) was adopted in Bonn, Germany in 1979 and came into force on 1 November 1983. Contracting Parties work together to conserve migratory species and their habitats by providing strict protection for endangered migratory species (listed in Appendix I of the Convention), concluding multilateral Agreements for the conservation and management of migratory species which require or would benefit from international cooperation (listed in Appendix II), and by undertaking cooperative research activities.

Entered into force on 1 November 1983, the convention is the sole international treaty that seeks to specifically address the conservation needs of migratory animals and is overseen by United Nations Environment Programme (UNEP).

Fundamental Principle

The convention was made in acknowledging the importance of migratory species being conserved, paying special attention to migratory species, and taking individually or in co-operation appropriate and necessary steps to conserve such species and their habitat. In the need to take action to avoid any migratory species from danger, the parties should promote, cooperate in and support research relating to migratory species, provide immediate protection to the species, and conclude agreements covering the conservation and management of the species.

Concept

All parties to the CMS acknowledge the importance of acting to conserve migratory species whenever it is possible and appropriate to do so. CMS adopts two-tier approach with the distinction between species identified as “endangered” and those considered to have an “unfavourable” conservation status with different obligations and policies in each category. Strict protection measures are prescribed for such species including anthropogenic activities that may cause harm to such species or their habitats. The convention defines what calls as “range states” as any State (and where appropriate any other Party referred that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species.

Main Features

The convention consist of XX articles with II appendices consisting the list of species.

Interpretation. Party of this convention means a state or any regional economic integration organization constituted by sovereign states which has competence in respect of the negotiations, conclusion, and application of international agreements in matters covered by this convention. For regional economic integration organizations which are the parties to the convention, shall exercise the rights and fulfill the responsibilities that attributed by the convention in their own name.

Endangered Migratory Species: Appendix I. Appendix I listing the endangered migratory species. To be listed in Appendix I, the migratory species should be provided reliable evidence including best scientific evidence indicating that the species is endangered. The migratory species listed in Appendix I may be removed when the Conference of Parties determines so on the basis of reliable evidence. The obligations for range states of migratory species in this list are :

- a) to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction;
- b) to prevent, remove, compensate for or minimize, as appropriate, the

adverse effects of activities or obstacles that seriously impede or prevent the migration of the species.

- c) to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of, or controlling or eliminating, already introduced exotic species.

Range states shall prohibit the taking of animals in Appendix I belonging, except for 3 reasons stipulated in Article 3 part 5 of the convention and any exceptions made shall as soon as possible be informed to the Secretariat.

Migratory Species Subject to Agreements: Appendix II. This list consist of migratory species with an unfavourable conservation status that require international agreements for their conservation and management. A migratory species may be listed both in Appendix I and Appendix II if the circumstances so warrant. The obligations of the range states of migratory species listed in Appendix II are:

- a. To conclude agreements where these would benefit the species and should give priority to those species.
- b. To take action with a view to concluding agreements for any population or any geographically separate part of the population of any species or lower taxon of wild animals, members of which periodically cross one or more national jurisdictional boundaries.
- c. To provide the Secretariat a copy of each agreement that has been concluded. For the guidance of the agreement, has been regulated in Article V of the convention.

Bodies Established by Convention. This convention established 3 bodies; Conference of the Parties, The Secretariat, and The Scientific Council with different role and functions as stated in Article VII, VIII, and IX.

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